

MINUTES
MALIBU CITY COUNCIL
SPECIAL MEETING
JANUARY 24, 2004
COUNCIL CHAMBERS
9:00 A.M.

CALL TO ORDER

Mayor Pro Tem Barovsky called the meeting to order at 9:00 a.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Pro Tem Sharon Barovsky, Councilmembers Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Gregg Kovacevich, Assistant City Attorney; Paul Huckabee, Planning Consultant; Masa Alkire, Assistant Planner and Lisa Pope, City Clerk.

FLAG SALUTE

Norm Haynie led the Pledge of Allegiance.

APPROVAL OF AGENDA

MOTION Councilmember Stern moved and Councilmember Jennings seconded a motion to approve the agenda. The motion carried 3-0, Councilmember House and Mayor Kearsley absent.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was properly posted on January 16, 2004.

ITEM 1A PUBLIC COMMENTS

None.

ITEM 1B COUNCIL COMMENTS

None.

ITEM 2 OLD BUSINESS

A. City of Malibu Draft Local Coastal Program – Public Workshop on the City of Malibu Draft Local Coastal Program (LCP) (December 2003) Specifically Concerning the Land Use Plan, Maps, Native Tree Protection, Environmentally Sensitive Habitat Areas, Scenic Resources and hillsides, Shoreline and Bluff Development, Water Quality, Wastewater, Grading, Hazards, and Cultural Resources

Lloyd Zola, LSA Associates, presented the staff report.

Patt Healy indicated support for Heal the Bay's suggestions. She requested the Council leave the zoning on Trancas Field as RR5. She also requested that the Council consider less density along Malibu Creek, and have a density designation at Trancas Lagoon to allow one-single family house.

Marty Burton, representing Ed Dingilian, encouraged the Council to hold firm on removing the ESHA designations in the Point Dume area.

Lloyd Ahern, President of the Las Tunas Homeowners Association, questioned when the final version of the Local Coastal Program/Local Implementation Program (LCP/LIP) would be provided. He suggested the workshops and hearings be advertised more.

Georgianna McBurney thanked the Council for allowing public input and working towards creating a plan that will reflect Malibu's local citizenry.

Ozzie Silna suggested identifying every item that varies from the General Plan with regards to the California Coastal Commission's LCP and the City's LCP. He discussed misrepresentations made with regards to ESHA.

Norm Haynie discussed the City's efforts to claim its right to have local ordinances. He stated he did not see any cumulative impact mitigation other than the Transfer of Development (TDC) and the Gross Structural Area programs. He suggested including a general statement which says "Notwithstanding any provision contained in the LCP, in the event that there is no nexus between the condition and the impact the condition will not apply" to might prevent the City from being sued.

Mary Ayerst thanked the Council for its efforts on behalf of standing up for democracy and the City's right to develop an LCP.

Anne Hoffman discussed unconstitutional provisions included in the Coastal Commission's LCP. She stated that the City had attempted to accommodate the Coastal Commission in every possible way. She requested the City Attorney write a legal analysis of where the statutory authority is for the following items: (1) the right of government to monitor property and to have onsite inspection rights; (2) the requirement that no fencing is allowed in an ESHA; (3) the requirement that people waive, in a deed restriction, their rights to seawall repair; and (4) mitigation for ESHA by requiring removal of habitat.

Councilmember Jennings addressed Mr. Haynie's comments regarding inclusion of non-coastal related matters in the LIP. He explained that the entire zoning ordinance was included so that the document will read coherently, but separated, so that people can understand what is part of the plan and what is not. He stated he would like to discuss the TDC program. He stated there was a general statement included in the Coastal Act regarding the nexus problem and suggested something along those lines could be inserted in the LCP/LIP. He explained the City's effort to revise the plan to make it consistent with the City's General Plan.

Mayor Pro Tem Barovsky stated she felt it was a good idea to create a list of how the General Plan would be effected under the Coastal Commission's LCP and the City's LCP. She stated the Civic Center would be upzoned, have more density and be rezoned visitor serving under the Coastal Commission's LCP. She discussed the tiered plan proposed by the County.

Mr. Zola stated Heal the Bay's wanted to ensure a tiered approach would not lead to increased development.

City Manager Lichtig stated Heal the Bay was still in the process of evaluating the ecological findings provided by the City, and that they had not yet made a definitive determination as to whether or not they would support a tiered approach.

Wade Major stated public participation was limited due to the complexity of the issue. He suggested providing layman's explanations and comprehensible summaries of the plans.

In response to Mayor Pro Tem Barovsky, Mr. Zola indicted the December 2003 versions of the LCP/LIP were available on the website. He stated the next version would be available two weeks prior to the March hearing. City Manager Lichtig explained that the December 2003 version was a compilation of all previously received comments.

Ozzie Silna questioned when the Coastal Commission's provisions prevailed over the City's. He stated the California Coastal Commission (CCC) indicated that if the City's provisions were more protective, then the City's would prevail and vice versa.

Norm Haynie discussed the Pismo Beach LCP amendment requesting a reduction of density in a residential development. He indicated that the CCC refused and retained the higher density. He stated the zoning established by the Coastal Commission in the LCP would take precedent over the City's and an amendment would have to be filed to change it.

John Mazza discussed the Zoning Ordinance Revisions and Code Enforcement Subcommittee's (ZORACES) January 3, 2004 staff report for the January 14, 2004 meeting discussing the Trails Master Plan and indicating the Point Dume trails were never excluded by the City Council and would be included. He suggested excluding the Safe Route to Schools trail and the Wandermere trail.

Councilmember Stern stated he was certain that the Safe Route to Schools trail had been eliminated.

Councilmember Jennings stated that there had been discussion at the Trails Committee where there was a dispute about whether the trails were included or omitted. He stated that the issue remained whether staff had to bring it back to the Council again to clarify the point. City Manager Lichtig indicated that the LCP map did not currently include trails, sidewalks and other features that Mr. Mazza wanted removed.

Judy Decker discussed a letter from Rick Morgan dated July 13, 2001 regarding deletion of trails.

Mary Ayerst stated that the trail was included in the spreadsheet not the LCP.

Anne Hoffman stated that the Coastal Commission LCP forced property owners to donate a trail over their property based on the Commission's determination. She questioned whether it was clear that the City would not require such a trail dedication.

Mr. Zola explained that the City decided where trail dedications would be at the time the map was adopted. He suggested ensuring the trails maps were what the City wanted and then requiring dedication of the trails.

In response to Councilmember Stern, Assistant City Attorney Kovacevich discussed the nexus between the condition and the impact.

Ms. Hoffman stated that if there has never been public access on that lot, then it would be a no-nexus situation where the City would be requiring access where there never had been. She stated that she felt the situation was a serious problem.

Assistant City Attorney Kovacevich stated it was potentially a problem, not necessarily a problem on its face, and needed to be reviewed on a case-by-case basis.

Councilmember Stern expressed concern regarding requiring a trail in exchange for a permit.

Mr. Zola suggested staff work with the City Attorney, come up with provisions and bring back in March a version that would require a nexus.

Councilmember Jennings stated Ms. Hoffman was correct that unless there was a nexus between the impositions on the public created by the development and the exaction being taken, then it cannot occur. He stated that he was not willing to abandon any effort for a trails system, whether by purchase or otherwise.

CONSENSUS

By consensus, the Council directed staff to work with the City Attorney to craft language spelling out a nexus situation and which keeps the City out of harm's way of a taking lawsuit related to trails provisions regarding nexus requirements.

Martin Burton, representing Mr. Dingilian, presented a letter regarding an offer to dedicate. He stated that there was no such offer of dedication. He requested the offer to dedicate be removed from his client's property. City Manager Lichtig stated that the July 22, 2002 map was not the map currently in the City's plan.

Councilmember Jennings stated the Council was referring to the maps included in the LCP.

City Manager Lichtig stated staff will research why the July 22, 2002 map was different and would make certain the map matches the July 22, 2002 actions.

CONSENSUS

By consensus, the Council directed staff to remove the unverified offer to dedicate on Mr. Dingilian's property.

The Council discussed Chapter 3

Mary Ayerst requested specific modifications to Chapter 3.

Patt Healy indicated she was referring to the July 2003 draft. She suggested that additional protection be provided for resource protection areas. She stated Coastal Sage Scrub was part of an ESHA in the General Plan and had now been deleted. She suggested limiting the development envelope to protect Coastal Sage Scrub due to Fire Department requirements for brush clearance. She discussed setback requirements which will lead to further destruction of mapped ESHAs. She questioned Ms. Ayerst's suggestion to eliminate Alder and Toyon. She stated that the ecosystem needed to be protected. She explained that people have the right to develop, but have to develop carefully.

Councilmember Jennings addressed Ms. Healy and explained that the law prohibited any development in ESHA.

Councilmember Stern suggested Ms. Healy read the December 2003 version and provide written comments.

Ms. Hoffman discussed the Coastal Commission's ESHA designations and indicated Coastal Sage Scrub was not a rare, threatened or endangered plant. She objected to the criticism that the plan was incorrect. She suggested the Council include the legal basis for City's ESHA determinations.

Ozzie Silna suggested possible identification of areas where the LCP digresses from the General Plan and the LCP proposed by the Coastal Commission. He stated the tiered approach regarding ESHA violated the General Plan, beginning with 3.43 – Conservation Element through Requirements for Protection of ESHA.

Mr. Zola reviewed the suggested changes by Ms. Ayerst and indicated that removal of Alder and Toyon was consistent with previous direction. He stated that he needed to check the reference on stream ESHAs. He indicated that the deletion of the Point Dume Canyon reference would be consistent with previous revisions. He stated he would review previous direction regarding the appropriateness and number of animals with regard to deleting the phrase "and any other constraints." He discussed the

headings for resource protection area policies, and indicated he would produce an analysis of the differences from the General Plan policies.

Mr. Haynie discussed marine protection and questioned whether restaurants and houses that were not resource dependant could be approved.

Mr. Zola indicated that the Coastal Act provision related to the taking could be cited in the Plan.

Ms. Hoffman asked about the tree ordinance and the requirement for monitoring of native trees. She stated Los Angeles County was revising their tree ordinance because it was causing people to cut down all the trees without replanting due to financial liability and use liability. She asked where in the law there was the ability to charge people for going underneath their trees. She suggested deleting Section 17.32.060A.

Mr. Zola suggested the arborist determine whether a particular construction would affect the trees.

Councilmember Jennings stated he was troubled by the Natural Community Conservation Planning (NCCP) section. Mr. Zola explained that if the Department of Fish and Game worked out an NCCP with the Coastal Commission that the City did not agree with, the City would not move forward.

Mr. Haynie stated the current plan does not have a reference to the cumulative impact mitigation, which he felt the CCC would demand. Mr. Zola stated cumulative impact was not in the Land Use Plan, but was in the LIP as Chapter 36 or 38. He stated that topic would be discussed on February 7, 2004.

The Council discussed Heal the Bay's request to incorporate the City's ecological findings supporting the tiered approach into the LUP and modification of Policy 3.12 to restore maximum development area requirements within ESHA

CONSENSUS

By consensus, the Council directed staff to retain the flexible approach.

Councilmember Jennings requested staff explain to Heal the Bay that the City did what it did in order to be more protective.

Mr. Zola explained Heal the Bay's request to modify Policy 3.14 to restore the requirement for full mitigation of development in ESHA.

Mr. Haynie agreed with the Council regarding the 10,000 square feet or 25% provision. He stated Broad Beach Road was considered an ESHA. He indicated that building a house on such a lot would have an impact. He questioned whether the owner would have to pay for the impact.

Mr. Silna stated he believed the reason for modifying the 10,000 square foot pad was that litigation would result if some development was not allowed.

Mr. Zola discussed the standards and exceptions regarding the 10,000 square foot or 25% rule.

Mr. Haynie stated the Coastal Commission only applied the stringline rule.

Wade Major questioned whether remodels would be impacted. Councilmember Jennings stated the Coastal Act had standards for disaster rebuilds.

CONSENSUS

By consensus, the Council agreed that there was no reason to require mitigation of insignificant impacts and directed staff to ensure that the definition of beach does not meet the definition of an ESHA.

The Council discussed Heal the Bay's request for modification of seasonal restrictions for grading.

Councilmember Jennings indicated his objection to Heal the Bay's definition of the rainy season in Malibu as extending from September 1 through approximately May 30.

CONSENSUS

By consensus, the Council directed staff to add a more reasonable definition of the rainy season to their task list.

The Council discussed the request for diking and filing wetlands per former Policy 3.90.

CONSENSUS

By consensus, the Council directed staff to add Policy 11 and no net new loss of wetland policy.

Mr. Silna asked the City's position on Disturbed Sensitive Resource Areas (DSRA). He discussed the General Plan's reference to DSRA.

The Council discussed Heal the Bay's request regarding 100-foot setbacks from the outer edge of riparian vegetation along non-ESHA streams.

CONSENSUS

By consensus, the Council directed staff to craft language by which the setback from a non-ESHA riparian would be based on the biological function of protecting the riparian.

The Council discussed Heal the Bay's suggestion regarding Policy 3.32.

CONSENSUS

By consensus, the Council directed staff to go back to the word "prohibit" as contained in the initial language.

RECESS

Mayor Pro Tem Barovsky called a recess at 11:35 a.m. The meeting reconvened at 11:42 a.m. with Mayor Pro Tem Barovsky, Councilmember Jennings and Councilmember Stern present.

Mayor Pro Tem Barovsky indicated that several members of the public arrived late and would like to address the Council.

Dennis Seider, member of Californians for Local Coastal Planning, stated that he was in the process of drafting an amicus brief in favor of Malibu's position that the State was not entitled to draft a local coastal plan. He discussed the Boston Tea Party and its similarity to the position of Malibu regarding the Coastal Commission drafting its Local Coastal Plan. He explained that the State drafted a plan, under emergency legislation, for the Malibu community that will affect every parcel. He stated that the Council could not do a thing about the plan that was drafted by the Coastal Commission. He stated that amendments to the plan would not be approved by the Coastal Commission. He stated neither the City Council nor the citizens of the City had the right to change the LCP and LIP.

Steve Uhring referred to the Superior Court of the State of California's decision regarding Taxpayers for Livable Communities v. the City of Malibu, Case No. BC258432. He stated that Judge Ronald Southman's decision, dated May 24, 2002, referenced the submission of the 2000 LUP plan to the Coastal Commission pursuant to resolution, and that on June 15, 2000 the LUP had been withdrawn by the City which generated AB988. He stated the whole process the City had been going through was

the result of a City-prepared LCP being submitted to the Coastal Commission and the City pulling it back.

The Council discussed Heal the Bay's requests related to wastewater and adding a policy for no net increase in storm water flows and pollutant loadings to Malibu Creek, Malibu Lagoon, and Surfrider Beach.

City Manager Lichtig recommended referring the matter back to staff for additional evaluation. She explained that some recommendations by Heal the Bay were their effort to make broad policy statements regarding their positions.

CONSENSUS

By consensus, the Council directed staff to continue meeting with Heal the Bay on some of their suggestions, including the last three bullet items on page 6 of their comment letter.

The Council discussed Heal the Bay's request to require comprehensive watershed planning for the City of Malibu.

CONSENSUS

By consensus, the Council directed staff to retain the provision as is.

The Council discussed Heal the Bay's request to modify Policy Nos. 3.130, 3.135, 3.137.

Mr. Zola suggested allowing staff to conduct additional technical review.

CONSENSUS

By consensus, the Council directed staff to conduct additional technical review of the requested policy modifications.

Mr. Zola explained Heal the Bay's request to modify or delete Policy 3.139 and indicated the LUP was not the appropriate place and suggested leaving it out.

CONSENSUS

By consensus, the Council directed staff to leave out Policy 3.139.

Mr. Zola discussed changes to Chapter 4.

Mr. Ahern, President of the Las Tunas Beach Homeowners Association, expressed concern regarding the December 2003 LIP. He stated Section 17.42.020 contained a sentence which reads: "The shoreline shall be

governed by the policies, standards and provisions of this Chapter in addition to any other policies or standards contained elsewhere in the certified LCP which may apply.” He expressed concern regarding Section 17.42.060B requiring recordation of a deed restriction preventing future repair of seawalls. He stated it was necessary to make sure that remodels do not require deed restrictions. He thanked staff for its efforts.

Mr. Zola stated staff wanted to ensure that legally constructed structures were allowed to be rebuilt following a disaster.

Paul Huckabee read Coastal Act Section 30235.

Alan Block discussed Coastal Act Section 30610G allowing replacement of a seawall after a natural disaster.

CONSENSUS

By consensus, the Council directed staff to eliminate the language regarding deed restrictions with regard Coastal Act Section 30235.

Mr. Zola suggested deleting the appeals provision and planned retreat. He indicated it should say that you can rebuild within the envelope and be able to repair seawalls. He suggested striking Section 17.42.020 and rewriting it in common sense manner and with clearer language.

Councilmember Stern concurred.

Councilmember Jennings explained that it was an introductory paragraph, and that everything that requires a permit will be subject to the entire plan.

Mr. Haynie stated that the Coastal Commission was established to implement Coastal Act provisions.

Mr. Seider expressed concern that requiring rebuilding with the same material and technology may not be the best practice.

Mr. Zola discussed Heal the Bay’s comments regarding Chapter 5.

CONSENSUS

By consensus, the Council directed staff to use the existing wetland delineation study.

CONSENSUS

By consensus, the Council directed staff to add water quality impact to Policy 5.52.

Ms. Ayerst discussed an inconsistency between LUP Policy 6.34 and LIP Section 17.34.050H. She suggested deleting “no such improvement shall be provided west of Malibu Canyon Road in order to maintain the rural character of area,” and replacing that with “any such improvements west of Malibu Canyon Road shall be required to maintain the rural character of that area.”

CONSENSUS

By consensus, the Council directed staff to implement Ms. Ayerst’s suggestion.

Ms. Hoffman discussed scenic areas and their appealability. She referenced Chapter 17.48.040. She indicated a need to clarify if the Council intended to define what is mapped as scenic area in the LUP as sensitive coastal resource areas.

Judy Decker discussed the yellow area on the map on page 113 of the LUP. She questioned whether the 60-watt light restriction referred to a single light or cumulative lighting.

CONSENSUS

By consensus, the Council directed staff to review the scenic resources map and lighting restrictions.

City Manager Lichtig suggested retaining terms that were understandable, such as watts.

Councilmember Jennings explained the proposed use of foot-candles.

Mr. Zola stated a one 60-watt bulb per porch was allowed.

Tom Mathews, representing Mr. Bren, 24008 Malibu Road, discussed Sections 17.42.040B and 17.42.040G. He stated his client has approved plans but is unable to move forward with those plans. He expressed concern regarding the use of the stringline rule. He stated that the policy, when applied, renders the property unbuildable.

Mr. Zola discussed the Coastal Commission’s standard practice of maintaining setbacks to preserve lateral access.

Mr. Haynie stated lateral access would not be obtained by restricting setback to 10 feet from the mean high tide line. He stated that the mean

high tide line does not designate the ownership line between state property and ownership.

In response to Mayor Pro Tem Barovsky, Mr. Haynie stated the purpose of the stringline rule was to reduce development. He stated, in his experience, the Coastal Commission had never applied the 10% rule against a stringline. He recommended eliminating the 10-foot setback.

Mr. Zola stated he could delete the reference or refer only to applying it where it would affect dry sand lateral access.

CONSENSUS

By consensus, the Council directed staff to include language to guarantee maximum lateral access over dry sandy beach.

Mr. Mathews indicated that the change would address his client's concerns.

CONSENSUS

By consensus, the Council directed staff to clarify Section 17.42.040B.

Councilmember Jennings expressed concern, with regard to Section 17.42.040B, with the reference to "whichever setback method is more restrictive shall apply." He indicated that there was no prior reference. He requested staff not lose sight of the fact that different things were being discussed.

Councilmember Jennings discussed questions regarding ESHA maps on Point Dume. Mr. Zola explained that the walkover with the biologist identified that the lower portion would qualify as an ESHA but not the upper portion. He indicated that action taken at the Coastal Commission was to delete all stream ESHAs on Point Dume. Councilmember Jennings suggested removing it all together. He discussed Title 14, Regulation 13577. He stated that one of the issues was the extent to which the Coastal Commission had expanded appeal jurisdiction beyond what might otherwise be inappropriate. He requested staff have that section in mind and be able to comment on the subject at the next meeting. He asked if staff was going to deal with coming up with an alternative to the TDC program with regard to cumulative impact analysis.

Mr. Zola explained that Chapter 17.08 of the LIP provided modifications to the planned development zone. He indicated that he could incorporate Mr. Haynie's suggestions.

The Council deferred discussion of Cultural Resources, Chapter 17.44.

CONSENSUS

By consensus, the Council directed staff to add a policy regarding water.

ADJOURN At 12:57 p.m., Councilmember Stern moved and Councilmember Jennings seconded a motion to adjourn. The motion carried 3-0, with Mayor Kearsley and Councilmember House absent.

Approved and adopted by the City Council of
the City of Malibu on March 22, 2004.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)